



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 252

[Docket DARS-2018-0036]

RIN 0750-AJ87

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Surge Option" (DFARS Case 2018-D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D025, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2018-D025" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2018-D025." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2018-D025" on your attached document.

- o Email: osd.dfars@mail.mil. Include DFARS Case 2018-D025 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately 2 to 3 days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS by modifying DFARS clause 252.217-7001, Surge Option, to replace the term "Production Surge Plan (DI-MGMT-80969)" with "Capabilities

Analysis Plan (CAP)" and add text to permit the option increase of supplies or services called for under the clause to be expressed as a specific number. The associated clause prescription at DFARS 217.208-70(b) is proposed to be amended to reflect that the option increase of supplies or services may also be expressed as a specific number.

This clause is incorporated into contracts that support industrial planning for selected essential military items in the event of a national emergency. Currently, the clause advises contractors that the Government has the option to increase the supplies or services delivered under the contract up to a specified percentage or accelerate the rate of delivery. It also instructs contractors to follow the Production Surge Plan (DI MGMT 80969) included in the contract or, if no plan is in the contract, to provide a delivery schedule to the Government within 30 days of contract award. A review of the clause text indicates that it should be modified to reflect current practices in the marketplace.

II. Discussion and Analysis

Paragraphs (b)(1) and (2) of DFARS clause 252.217-7001 include a reference to a Production Surge Plan (DI MGMT 80969). DoD subject matter experts advise that Production Surge Plan (DI MGMT 80969) is no longer an up-to-date reference and that Capabilities Analysis Plan (CAP) is the current terminology used

in industrial planning efforts. This rule will update the clause paragraphs to reflect the current industry terminology.

Paragraph (a) of the DFARS clause provides contractors with a maximum quantity of supplies or services by which the Government may increase the contract in order to support a surge need. This quantity is expressed as a percentage of the supplies or services currently being provided for under the contract. Supply chains supporting surge needs more commonly express increases of supplies or services as a specific number of additional supplies or services to be provided under the contract, as opposed to an additional percentage of the supplies or services already being provided under the contract. In order to reflect current supply chain practices, this rule proposes to permit the contracting officer to express DoD's surge need as a specific quantity of supplies or services needed, or utilize the existing method of expressing the surge need as a percentage of contracted supplies or services.

The proposed revision to this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to

review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause.

Subsequently, the DoD Task Force reviewed the requirements of DFARS 252.217-7001, Surge Option, and determined that the DFARS coverage should be revised to align with industry practice.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, including Commercially Available Off-The-Shelf (COTS) Items

This rule does not propose to create any new provisions or clauses. The proposed changes to DFARS clause 252.217-7001, Surge Option, are minimal and reflect only updates required to mirror current industry terminology and practice for support that may be required for industrial planning for selected essential military items in the event of a national emergency. The rule applies to contracts below the SAT, however, the rule does not apply to commercial items and COTS items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule is only updating a term used in the clause and However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to improve the flexibility offered to contractors when submitting pricing by giving the option to quote prices by percentage or quantity increases and update the terminology used from "Production Surge Plan" to "Capability Analysis Plan" (CAP). The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Based on fiscal year 2017 data from the Federal Procurement Data System, the Government issued approximately 78 contract actions that cited mobilization as the reason for other than full and open competition for the surge option. Of the 78 total contract actions, approximately 33 awards were made to 24 unique small businesses entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant

alternative approaches to the proposed rule that would meet the proposed objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 217 and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217 and 252 are proposed to be amended as follows:

1. The authority citation for parts 217 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

217.208-70 [Amended]

2. In section 217.208-70, amend paragraph (b)(1), by removing “percentage” and adding “percentage or quantity” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.217-7001 by—

- a. Removing the clause date of "(AUG 1992)" and adding "(DATE)" in its place;
- b. Revising paragraph (a) (1);
- c. In paragraph (b) (1), removing "Production Surge Plan (DI-MGMT)" and adding "(Capabilities Analysis Plan (CAP))" in its place; and
- d. In paragraph (b) (2), removing "Production Surge Plan" and adding "CAP" in its place.

The revision reads as follows:

252.217-7001 Surge Option.

* * * * *

(a) * * *

(1) Increase the quantity of supplies or services called for under this contract by no more than ____ percent or ____ [insert quantity and description of services or supplies to be increased]; and/or

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[FR Doc. 2018-14040 Filed: 6/28/2018 8:45 am; Publication Date: 6/29/2018]